THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 24733 of 2002

Date: .09.2005

Between:

Capt. M.R.Seethapalli(Retd.), E.C.No.56305,

S/o. late Seetharamaiah, 64 years, r/o. 194,

Vaykupuri colony, Secunderabad …Petitioner

And

1) Union of India, rep. by its Secretary for defence,

South Block, New Delhi & 4 others

…Respondents

ORDER:

Challenging the action of the respondents in not properly implementing the instructions issued by the Government of India for fixing the petitioner's revised pension with effect from 01.01.1996 and to direct the respondents to take into consideration total period of 17 years 1 month 9 days served by the petitioner in Army and the Central Govt. Department as qualifying service for pension and also grant weightage for calculating pension in accordance with the rules promulgated by the Central Government pursuant to the recommendations of 5th Central Pay Commission and to fix the same from 01.01.1996, the present Writ Petition is filed.

It is the case of the petitioner that he joined Army service on 19.11.1956 and he was granted emergency commission on 09.02.1964 and released on 20.09.1969. Later, he served in Central Government as Assistant Central Intelligence Officer (Tech.) grade. I and thereafter, he was granted special short service commission in the Army from 15.01.1972 to 15.01.1974. After his release from Army as Emergency Commissioned Officer in 1969, Rs.95/- per month was granted as service pension to him, and the same was revised from time to time and fixed at Rs.1,894/- per month as per the recommendations of the 5th Pay Commission, by taking his qualifying service as 12 ½ years. But, the fourth respondent issued orders in the year 2000 modifying the earlier pension payment order reducing his pension to Rs.1,516/- after taking qualifying service at 10 years and excess payment was ordered to be recovered. Thereafter, the fourth respondent issued another order cancelling the earlier pension orders and did not fix any pension, ordering only recovery of excess payments. However, he was being paid Rs. 1,275/- per month. It is submitted that the petitioner made several representations in this regard. In October, 2002, the third respondent, while rejecting his claim for revision of pension as per revised rules, admitted his qualifying service as 12 ½ years. Hence, this Writ Petition.

The respondents filed counter affidavit contending that the service of the petitioner as Short Service Commissioned Officer and in the Central Government as Assistant Central Intelligence Officer (Tech.) Grade.I can not be counted for calculating qualifying service for grant of pension. Fixation of pension of petitioner at Rs.1,894/- or Rs.1,516/- per month was erroneous. The total qualifying service for grant of pension for rank of Captain works out as 10 years. Raising the objection after long period is apparently an effort by the petitioner to misinterpret the instructions to his advantage. The weightage of 5 years as claimed by the petitioner is admissible in case of regular

commissioned officer of Captain but not in case of Emergency Commissioned Captain's rank and so, the petitioner is not entitled thereto. Further, the benefit of weightage of 5 years is admissible to those commissioned officers who were in service on or after 01.01.1996 and so, the petitioner is not entitled to the said weightage. The petitioner did not appreciate the Ministry of Defence letter dated 07.06.1999. The petitioner is paid the pension he is entitled and the Writ Petition is, therefore, liable to be dismissed.

Learned counsel for the petitioner contended that the petitioner put up a total service of 17 years 1 month 9 days in the Army as well as in Central Government; that originally, his pension was fixed taking his qualifying service at 12 ½ years for the purpose of its calculation; thereafter, the said qualifying service was reduced from 12 ½ years to 10 years; that the respondents rejected the claim of the petitioner to fix the appropriate pension as per the Rules of Government of India, which came into effect from 01.01.1996 and they were not implemented properly. The learned counsel further contended that weightage of 5 years shall be given to the service rendered in the Army. Therefore, he prays to allow the Writ Petition.

On the other hand, the learned standing counsel appearing for the Central Government contended that the Writ Petition is liable to be dismissed on the ground of laches; the circulars issued by the Government of India especially the memo dated 03.02.1998 would apply to the Army forces personnel who are in service after 01.01.1996; that weightage of 5 years is not applicable to the petitioner; that no specific challenge is made when his qualifying service is reduced as per Rules from 12 ½ years to 10 years; therefore, there are no grounds to grant any relief to the petitioner.

It is not in dispute that the petitioner initially joined in the Army Pre-commissioned service and worked in the said category for 7 years 2

months and 20 days. There is also no dispute to the fact that he served in Army as an Emergency Commissioned Officer for 5 years 7 months 24 days, in Central Government for 2 years 3 months 15 days and 2 years as Special Short Service Commissioned Officer. Thereafter, he was released from Army as Emergency Commissioned Officer in the year 1969. At that time, he was granted service pension of 95/- per month. Subsequently, his pension was revised from time to time and basing on the recommendations of the 5th Central Pay Commission, his pension was revised to Rs.1,894/- per month. The qualifying service of the petitioner was taken as 12 ½ years for calculation of the pension. Thereafter, in the year 2000, his pension was modified and refixed at Rs. 1,516/-, duly taking his qualifying service as 10 years instead of 12 ½ years. When the qualifying service of the petitioner was taken as 12 ½ years at the time of fixing the pension, he did not challenge the same. Even when his qualifying service is reduced to 10 years, there was no challenge by the petitioner as to how he is entitled for calculation of pension for the service rendered by him in the Army.

It is the case of the petitioner that the circular instructions issued by the Government of India have not been followed to determine the qualifying service and fixed the pension accordingly. Further, the case of the petitioner is that as per the Ministry of Defence letter dated 28.11.2000, weightage of 5 years shall be given to the officers who retired as Emergency Commissioned Officer or Short-service Commissioned Officers and who have put up minimum qualifying service of 12 years, but less than 20 years.

The Chief Controller of Defence Accounts (Pensions), Allahabad in his proceedings no.1404/2000, reduced the pension from Rs.1,894/- to Rs.1,516/- duly taking the qualifying service as 10 years instead of 12 ½ years as determined earlier. The said order is not under challenge. The respondent issued proceedings dated 09.10.2002 clarifying that the period of service rendered by the petitioner after retirement from Army Service is not countable as per the existing

orders on the subject. Regarding revision of pension under 5th Central Pay Commission in terms of Ministry of Defence letters dated 27.05.1998 and 07.06.1999, it is stated in the said proceedings that the issue is under consideration of the Ministry. It is also made clear that the Ministry of Defence letters dated 06.08.1984, 30.10.1987 and 03.02.1998 are not applicable to the case of the petitioner as he retired from service in the year 1969. It is also made clear that rank weightage was not admissible to the persons who retired from service prior to 1996. The said order is also not under challenge stating that the contents therein are not in accordance with the circulars issued by the Government of India from time to time.

The learned counsel for the petitioner placed strong reliance on the letter of Ministry of Defence dated 03.02.1998, which was issued for implementation of Government decisions and the recommendations of the 5th Central Pay Commission regarding pensionary benefits for armed forces officers. The circular instructions would indicate that full pre-commissioned service rendered under the Central Government whether in a civil department or in the Armed Forces would be taken into account for working out the qualifying service for earning pensionary benefits subject to fulfillment of other conditions and this would also be counted for determining the minimum qualifying service indicated in note 3 for earning retiring/service pension and in the cadre of Lieutenant Colonel, a weightage of 5 years shall be given. So, basing on these proceedings, the learned counsel contended that the service rendered in the Central Government should be taken into account for the purpose of determining qualifying service. He also contended that 5 years of weightage should be given to the petitioner. On the other hand, the learned counsel for the respondents contended that these circular instructions dated 03.02.1998 have no application to those who retired from service prior to 01.01.1996.

It is not in dispute before this Court that the petitioner retired from service on 30.09.1969. There is a clear indication in this letter to the effect that the instructions of this letter shall apply to the Armed forces personnel who were in service as on 01.01.1996 or joined/join service thereafter. The subject of this letter also indicate that the implementation of the Government decisions on the recommendations of the 5th Central Pay Commission regarding pensionary benefits for the armed forces officers and personnel below officer rank retired or dying in harness on or after 01.01.1996. So, the circular instructions have no application to the case of the petitioner.

The counsel for the petitioner placed strong reliance on the Corrigendum of the Ministry of Defence dated 28.11.2000 issued to the letter dated 03.02.1998 whereunder it is stated that ECOs/SSCOs retiring after rendering actual qualifying service of 12 years and more but less than 20 years would be granted uniform weightage of 5 years and those retiring after rendering actual qualifying service of 20 years and more would be granted rank-wise weightage as given in para 5(b) (I) of the letter dated 03.02.1998. As already stated, the letter dated 03.02.1998 has no application to the case of the petitioner since he retired long prior to 01.01.1996.

Having come to the Court, it is for the petitioner to explain as to how the fixation of his revised pension with effect from 01.01.1996 is contrary to the instructions issued by the Government of India. The petitioner failed to show that reducing the qualifying service from 12 ½ years to 10 years is arbitrary and illegal. So also, he failed to show that his pension has to be calculated by adding the service rendered by him in the Central Government to the service in the Armed forces. He has not shown that fixation of pension is contrary to the revision pension rules which came into force from 01.01.1996. Therefore, in

the absence of any factual foundation as to how the petitioner is entitled for fixation of pension for the total service of 17 years, he is not entitled for the benefit as such. On the other hand, proper explanation is given by the respondents for reducing the qualifying service from 12 ½ years to 10 years that his qualifying service for grant of pension in the rank of Captain falls short of minimum qualifying service of 12 years as in that case his other ranks service would be counted as 2/3 qualifying service as per the Ministry of Defence letter dated 30.08.1966. Since the pension of the petitioner has been revised erroneously at Rs. 1,894/-, which was cancelled on deduction of genuine misinterpretation of the instructions and the recovery of excess amount paid was ordered. The representation of the petitioner has been replied and a detailed explanation was given by the respondents vide letter dated 09.10.2002. In view of these facts, the petitioner is not entitled for any relief in this Writ Petition.

The Writ Petition is devoid of merits and the same is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

01.09.2005

DRK

At the time of pronouncement of judgment, the learned counsel for the petitioner placed a copy of the proceedings issued by the respondents dated 22.07.2005 fixing revised pension of the petitioner. Therefore, this Order will not preclude the respondents from paying the revised pension as fixed by them in the aforesaid order.

(K.C.Bhanu, J.)

DRK